No. 94-1647

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1994

STATE OF IDAHO; PHIL BATT, GOVERNOR; PETE CENARRUSA, SECRETARY OF STATE; ALAN G. LANCE, ATTORNEY GENERAL; J.D. WILLIAMS, CONTROLLER; ANNE FOX, SUPERINTENDENT OF PUBLIC INSTRUCTION; KEITH HIGGINSON, DIRECTOR, DEPT. OF WATER RESOURCES; each individually and in his official capacity; IDAHO STATE BOARD OF LAND COMMISSIONERS; and IDAHO STATE DEPARTMENT OF WATER RESOURCES,

Petitioners,

v.

COEUR d'ALENE TRIBE, in its own right and as the beneficially interested party subject to the trusteeship of the UNITED STATES OF AMERICA; ERNEST L. STENSGAR, LAWRENCE ARIPA, MARGARET JOSÉ, DOMNICK CURLEY, AL GARRICK, NORMA PEONE and HENRY SIJOHN, individually, in their official capacity and on behalf of all enrolled members of COEUR d'ALENE TRIBE,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF IN OPPOSITION TO CROSS-PETITION FOR A WRIT OF CERTIORARI

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The State of Idaho and the other named defendants respectfully request the Court to deny the cross-petition for a writ of certiorari seeking review of the decision of the Court of Appeals for the Ninth Circuit in this case. 42 F.3d 1244.

REASONS FOR DENYING THE WRIT

1. Waivers of Eleventh Amendment Immunity Must Be Explicit And Cannot Be Implied From State Court Decisions.

The Cross-Petitioner, Coeur d'Alene Tribe, asserts that Idaho has "limited" its sovereignty in such a way that quiet title claims are not claims against the sovereignty of the state. As discussed below, the Tribe's argument mistakenly interprets Idaho law. But, for purposes of Eleventh Amendment immunity, any limitation on state sovereignty would nonetheless be irrelevant. Despite the Tribe's attempt to distinguish limitations on sovereignty from limitations of sovereign immunity, it is axiomatic that the two concepts are indistinguishable.

The Tribe fails to recognize that state court decisions on the limits of sovereign immunity do not provide guidance in the application of the Eleventh Amendment. This Court has consistently held that a statutory waiver of immunity within a state court system is "not determinative of whether [a state] has relinquished its Eleventh Amendment immunity from suit in the federal courts." *Edelman v. Jordan*, 415 U.S. 651, 677 n. 19 (1974). There is no principled reason for treating judicial waivers of immunity differently. States must be free to define their sovereign immunity for internal purposes without worrying about the effect of such decisions on Eleventh Amendment immunity. "When a state authorizes a suit against itself . . . it is not consonant with our dual system for the Federal courts to be astute to read the consent to embrace Federal as well as state courts." *Great Northern Life Ins. Co. v. Read*, 322 U.S. 47, 54 (1944). The Ninth Circuit correctly refused to "infer a waiver of Eleventh Amendment immunity based on a state court holding that no sovereign immunity

bars its own jurisdiction." 42 F.3d at 1249. The Ninth Circuit's decision is entirely consistent with the Supreme Court's insistence that state waivers of immunity must be "unequivocally expressed," *Pennhurst State School and Hospital v. Halderman*, 465 U.S. 89, 99 (1984), and further review is therefore unnecessary.

2. Idaho Has Never Limited Its Sovereignty So As To Allow Quiet Title Claims To Be Brought Against It In Federal Court.

The Tribe's cross-petition is based on its unfounded belief that the Eleventh Amendment does not apply in this action because the sovereignty of the State of Idaho does not include immunity to claims seeking to quiet title to property. The primary basis for the Tribe's argument is the decision of the Idaho Supreme Court in *Lyon v. State*, 283 P.2d 1105 (Idaho 1955). The Tribe asserts that the following language from *Lyon* limits Idaho's sovereignty so that quiet title actions regarding property in which the State claims an interest present no claim against the sovereignty of the State:

> A suit to quiet title to land allegedly owned by appellants and to which the Board of Education of the State of Idaho allegedly asserts a claim is not a claim against the Board of Education, or the State, to which it can interpose sovereign immunity as a defense. Roddy v. State, 65 Idaho 137, 139 P.2d 1005, and authorities cited therein; State ex rel. Black v. State Board of Education, 33 Idaho 415, 196 P. 201; 59 C.J. 282, Sec. 429; 81 C.J.S., States, § 194, p. 1260; Section 33-3802, subd. (b), I.C. [Idaho Code].
>
> The appellants by the proceedings are asserting no claim against the sovereignty, but are attempting to retain what they allegedly own.

283 P. at 1106.

The Tribe simply misreads *Lyon*. First, it ignores the fact that the appellant in *Lyon* had abandoned all claims against the State, therefore prompting the court to note that it would

"not discuss or decide whether the respondent State of Idaho is immune because of sovereignty from a suit of this nature. . . . " *Id.* Therefore, the court, by definition, was not defining the sovereignty of the State of Idaho, but was merely defining the status of claims against the Board of Education, which were the only claims at issue on appeal.

Moreover, the holding in *Lyon* is not founded on general principles of sovereignty, but on the unique status of the Board of Education. This is readily demonstrated by checking the authorities referenced in *Lyon* as authority for its holding.

One of the primary authorities cited in *Lyon* is *State ex rel. Black v. State Bd. of Education*, 196 P. 201 (Idaho 1921). There, the court undertook an exhaustive analysis of the status of the Board of Education (acting as the Regents of the University of Idaho).[1] The court found that claims against the Board were not claims against the State, for the following reasons:

> [T]he Board of Regents is a constitutional corporation with granted powers, and while functioning within the scope of its authority, is not subject to the control or supervision of any other branch, board or department of the state government, but is a separate entity, and may sue and be sued, with power to contract and discharge indebtedness, with the right to exercise its discretion within the powers granted, without authority to contract indebtedness against the state, and in no sense is a claim against the regents one against the state.

196 P. at 205.

Obviously, the holdings in *Lyon* and *State ex rel. Black* both turn on the unique status of the Board of Education. In both cases, the court pointed out that the Board is sufficiently separate from the State of Idaho so that claims against the Board are not claims "against the sovereignty." The Tribe is

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[1] 196 P. at 202. *See also* Idaho Code § 33-2802 (1981) (Board of Education constitutes Board of Regents of University of Idaho).

simply wrong when it cites Lyon as authority for a general limitation of Idaho's sovereignty.

The other authorities cited in *Lyon* confirm that the *Lyon* court was not limiting the sovereignty of the State of Idaho, but was merely addressing the status of the Board of Education. For example, the statutory provision cited by the court is part of a chapter in the Idaho Code defining the Board of Education, in its role as the regents of the University of Idaho, as a "body politic and corporate and a separate and independent legal entity," and providing that the Board may "sue and be sued." Idaho Code §§ 33-3803, 33-3804(b) (1948).[2] The two citations to *Corpus Juris* and *Corpus Juris Secundum* refer to sections noting that "[a] claim against a state university or a board of regents thereof is not a claim against the state." 59 C.J. *States* § 429 (1932); 81 C.J.S. *States* § 194 (1953). Both sections refer to the decision in *State ex rel. Black* as authority.

The one authority in *Lyon* not specifically addressed to the Board of Education was *Roddy v. State*, 139 P.2d 1005 (Idaho 1943). In *Roddy*, the plaintiff sued state officers to quiet title to warrants issued by a drainage district. The State Auditor claimed the warrants as escheated property, and asserted they were a lien against the plaintiff's real property. The trial court dismissed the State due to the fact that it had not given its consent to be sued, but retained jurisdiction over the State Auditor and other state officials who were named as defendants. *Id.* at 1006. The trial court went on to hold that the warrants had never escheated to the State, and quieted title in the plaintiff. *Id.* at 1007. On appeal, the state officials

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[2] The citation in *Lyon* is to section 33-3802(b) of the 1948 edition of the Idaho Code. That section, however, is simply a definition section defining the term "board." It is much more likely that the reference to 33-3802(b) is a typographical error, and that the intended reference is to 33-3804(b), which provides that the Board of Education may "sue and be sued." Notably, despite the broad language in 33-3804(b) the local federal courts have found that the sovereign immunity of the State Board of Education has not been waived for purposes of the Eleventh Amendment. *Mazur v. Hymas*, 678 F. Supp. 1473 (D. Idaho 1988).

claimed the State was a necessary party, but the appellate court held that the suit was maintainable against the officers. Thus, the *Roddy* decision is nothing more than an application of the well-established rule differentiating suits against officers from suits against the State itself, when the officer's action is alleged to be unconstitutional. While *Roddy* may be broader than this Court's Eleventh Amendment decisions, it does not generally limit Idaho's sovereignty so as to allow quiet title actions against the State, especially when those actions are brought in federal court.

The Ninth Circuit properly refused to rely on *Lyon* and *Roddy* as waivers of Eleventh Amendment immunity. 42 F.3d at 1244. The Ninth Circuit's decision does not conflict with the decisions of other circuits, the decisions of the Idaho Supreme Court, or the decisions of this Court. Under such circumstances, review by writ of certiorari is not warranted.

CONCLUSION

The cross-petition for a writ of certiorari should be denied.

Respectfully submitted.

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